

**TESTIMONY
SB 369**

**Before the
House Federal Relations, Energy and Telecommunications Committee
March 19, 2007**

By Ken Sugden, General Manager, Flathead Electric Cooperative

Mr. Chairman, Members of the Committee, for the record my name is Ken Sugden. I am general manager of Flathead Electric Cooperative headquartered in Kalispell, Montana. Thank you for holding this hearing on Senate Bill 369. Our co-op rises in strong support of this bill.

In anticipation of possible questions you may have about Flathead Electric's need and rationale for this bill, I would like to address specific issues under two general headings. These include the history of our involvement and the significant change that has occurred since the amendment to the electric co-op enabling law was adopted in 2001.

First, you may be wondering, "Did Flathead Electric know at the time it purchased the PacifiCorp property that this property would be subject to the Federal Communications Commission (FCC) pole attachment formulas, regardless of the Legislature's involvement?"

The answer is no. Electric cooperatives are generally not regulated by the FCC on pole attachments. This was specifically reaffirmed in the case of Flathead Electric's acquired PacifiCorp property. In August, 2000, the FCC decided it had no jurisdiction to regulate pole attachment fees of Flathead Electric's subsidiary, Energy Northwest, Inc., which operated the former PacifiCorp property located in Whitefish, Columbia Falls and Kalispell. FCC said it had no jurisdiction because Energy Northwest was cooperatively owned.

Still, you may assert, "But if Flathead Electric agreed to the 2001 amendment, why is the co-op now seeking to have it repealed?"

The legislative rationale for this bill has already been touched on. But I want to underscore two major changes that have occurred since 2001. The first change occurred almost immediately. The second change – a monumental one – has occurred in the last couple of years.

As previously noted, shortly after the amendment became law, the cable TV provider at the time asserted that the requirement that our co-op follow the FCC formulas must be applied throughout the co-op's service area, not just to the cable TV attachments within the municipalities we serve. This unanticipated

assertion for across-the-board application had major implications because 75 percent of these attachments are on poles outside these municipalities.

The second change is of even greater significance. When the 2001 amendment was passed, AT & T, the company bringing the amendment, was only providing one-way cable TV communications with its pole attachments. About two years ago, AT & T's successor, Bresnan Communications, began offering Internet service. Then, in the third quarter of 2006, Bresnan began offering digital phone service. This placed the company in direct competition with the local, incumbent phone company. Passage of SB 369 would allow our co-op to respond to this change in services by being able to charge these competitors the same attachment rates.

We have also been asked if this matter could be settled in court rather than involving the Montana Legislature.

However, because the state statute references a federal formula, this matter would have to be resolved in federal court. It is not practical for a small electric cooperative like Flathead to seek change in FCC's position or interpretation of rules on cable TV attachments. Our local co-op ratepayers would bear the cost of this expensive litigation.

More importantly, as has been stated previously but cannot be overemphasized, this issue was borne out of the anomaly of the 2001 Legislature's adoption of the amendment that Senate Bill 369 seeks to repeal. Rather than incur the high cost and undertaking of protracted litigation, Montanans are best served by legislative action to remove this anomaly from state law.

You also may be wondering whether Flathead Electric wants to be able to bill companies whatever it wishes for their pole attachments and whether we can be trusted to fairly charge companies attaching their cables to Flathead Electric's poles?

Flathead Electric's trustworthiness in this matter is demonstrated in part by the co-op's not having charged telecommunications companies the maximum allowed under the FCC formulas. Other telecommunications companies are paying to the co-op an attachment rate that is about 5 percent lower than the FCC rate. Second, with local control, Flathead Electric's consumer-elected trustees realize that many of their ratepayers pay both Bresnan and Flathead Electric bills. Third, as indicated, we have reached an agreement that would allow a gradual phase-in of our rates charged to Bresnan Communications. Under this agreement, Flathead Electric will phase in Bresnan's pole attachment rate over five years from 2008 through 2012.

You also may be wondering why the attachment rates we charge are important to our operations. The answer is that there are definite costs and challenges

associated with having these cables attached to the co-op's poles. These challenges include safety, right-of-way and weight load.

When other utilities attach their cables to electric utility poles, there generally is a need for a higher, stronger pole than would be required without the pole attachments. The attaching company pays for these initial upgrades but the co-op bears the cost of any replacement poles needed when they are damaged or wear out. It's also important to note that the attachment of cable TV and telephone cables causes strain on the pole due to the wind and ice loading of the cable between poles. In addition, in order for linemen to climb up to work on the electrical lines at the top of the pole, they must climb around the telephone and cable TV pole attachments. In order to do that they must unhook their strap around the pole and re-hook it above the pole attachments. The addition of pole attachments also requires coordination between the utilities in instances where the pole is damaged by trees, automobiles, etc.

Would SB 369 affect any other companies besides Bresnan on our system?

Not at this time. However, Time-Warner offers video and Internet services in Libby and we understand they are planning to soon begin offering telephone services. Flathead Electric feels they also should pay the telecommunications attachment rate as soon as they begin offering telephone service. Our intention is to phase in that company's rate to arrive at the same rate.

In closing, Senate Bill 369 will allow us to treat all telecommunications companies the same and we believe the agreement that has been reached provides a very reasonable phase-in to the attachment rates paid by telecommunications providers.

Senate Bill 369 also restores fairness for our own customer-owners. To the degree any telecommunications company pays less than its fair share on pole attachments, the cost of maintaining those poles is being subsidized by our electric ratepayers.

By passing Senate Bill 369, you will allow Flathead Electric to again have local control of its operations so these kinds of inequities can be worked out reasonably. Thank you for the opportunity to testify.